

June 3, 2014
Antelope County Board
Neligh, Nebraska

The Antelope County Board of Supervisor's convened in regular session on Tuesday, June 3, 2014 at 9:08 AM in the County Supervisor's room, Antelope County Courthouse annex, Neligh, Nebraska. Meeting called to order by Chairman Schwager with the following board members responding to roll call: Kerkman, Baker, Williby, Henery and Schwager. Bolling and Brandt absent. Chairman Schwager stated that the open meeting laws are posted on the east wall of the Supervisor's room with more copies available at the County Clerk's office.

Notice of the meeting was given in advance thereof by publication in the four county newspapers, legal newspapers printed and in general circulation in Antelope County, Nebraska as shown by proof of publication filed in the County Clerk's office. Agenda for said meeting was sent to all members of the County Board of Supervisor's.

Mike Jones with Vision Care Direct met with the county board to present the vision plan his company offers. Mr. Jones was informed that he could speak with the county employee's regarding the vision plan.

Motion by Henery, seconded by Baker to approve the May 6th, 2014 and May 12th, 2014 regular board minutes. Those voting aye: Kerkman, Baker, Williby, Henery and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Henery, seconded by Williby to approved the application for permit submitted by North Central Public Power District to place two permanent electric lines beneath 530th Avenue crossing 1155' south of the 860th Road mile line from the NE1/4 of Section 29 to the NW1/4 of Section 28, and crossing 2075' south of the 860th Road mile line from the NE1/4 of Section 29 to the NW1/4 of Section 28, both in Township 27 North, Range 5 West of the 6th P.M., Antelope County, Nebraska, Derek and Kimberly Zuhlke owner, said permits for power supply to irrigation pivot, grain/hog facility and residence due to service distribution line re-build; all work to be done according to State specs. Those voting aye: Baker, Williby, Henery, Kerkman and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Williby, seconded by Kerkman to approve the application for permit submitted by Dean Smith to place a permanent electric line beneath 522nd Avenue crossing at the NE1/4 of Section 36, Township 28 North, Range 7 West of the 6th P.M., Antelope County, Nebraska, Dean Smith, tenant, said electric line to provide electricity to an irrigation motor; all work to be done according to State specs. Those voting aye: Henery, Kerkman, Baker, Williby and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Henery, seconded by Baker authorizing Chairman Schwager to sign the resolution allowing the County Clerk and additional \$100.00 petty cash; said cash to be placed in the clerk's cash drawer to make change for the items sold and/or recorded in the clerk's office. Those voting aye: Williby, Henery, Kerkman, Baker and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

RESOLUTION NO. 2014-06-0001

WHEREAS, the Antelope County Clerk was awarded a petty cash of \$50.00 by the Antelope County Board of Supervisors on January 7, 2003;

WHEREAS, the Antelope County Clerk has been made aware by the Nebraska State Auditor's office that the cash drawer kept in the County Clerk's office is also considered petty cash;

WHEREAS, the Antelope County Clerk needs to have a cash drawer of \$100.00 in order to make change to customers for plat maps, copies, hunt and fish licenses as well as the Register of Deeds fees collected throughout the day;

THEREFORE, BE IT RESOLVED BY THE ANTELOPE COUNTY BOARD OF SUPERVISORS that the Antelope County Clerk is awarded an additional \$100.00 in petty cash to be placed in the County Clerk's cash drawer to be used to make change for the different items and documents that are sold and/or recorded within the office.

Dated this 3rd day of June, 2014.

Attest:

Carolyn Pedersen /s/
Antelope County Clerk

(SEAL)

Jerald Schwager /s/
Chairman of County Board

St. Ignatius Catholic Church submitted a request for \$425.00 from the Antelope County Improvement Fund to be used to update the current sign giving the weekend service times for the local churches in Brunswick. The Antelope County Visitors Committee reviewed the request. Visitor Committee members Judy Boardman and Holly Meuret voted in favor of granting the request and Committee members Dale Wilkinson, Deb Warren and Carolyn Pedersen voted to deny the request due to they did not feel that the request met the requirements of the Improvement Fund which states “capital improvement grants must be used to expand or improve existing attractions that are open to the public and are of educational, cultural, historical, artistic or recreational significance and that promote tourism and or generate positive visibility for Antelope County.”

Motion by Kerkman, seconded by Baker to accept the Antelope County Visitors Committee’s recommendation and deny the request for \$425.00 from the Antelope County Improvement Fund by St. Ignatius Catholic Church to update the sign giving weekend service times at the local churches at Brunswick. Those voting aye: Henery, Kerkman, Baker, Williby and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Kerkman, seconded by Henery to approved the election payroll for the May 13, 2014 Primary election. Those voting aye: Kerkman, Baker, Williby, Henery and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Kerkman, second by Baker to leave the NIRMA deductible at \$1,000.00 for fiscal year 2014/2015. Those voting aye: Baker, Williby, Henery, Kerkman and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Discussed placing the question of Discontinuance of Township Organization on the November 4, 2014 General Election ballot; no action taken.

Motion by Henery, seconded by Kerkman to approve paying the first half of the Nebraska Association of County Officials dues in the amount of \$1,762.00 for fiscal year 2014/2015. Those voting aye: Williby, Henery, Kerkman, Baker and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Motion by Kerkman, seconded by Williby to approve paying the Northeast Nebraska Economic Development District dues in the amount of \$875.00 for fiscal year 2014/2015. Those voting aye: Henery, Kerkman, Baker, Williby and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Supervisors Kerkman, Baker and Schwager will conduct the 2nd quarter jail inspection.

A letter was received from Nebraska Auditor of Public Accounts Mike Foley stating that the state auditor’s office will conduct the 2013/2014 county audit this year due to “several issues regarding the Antelope County Treasurer’s office” and recommended that the county board reject all county auditor proposals received. Motion by Henery, seconded by Williby to deny all county auditor proposals received for the fiscal years of 2013/2014, 2014/2015 and 2015/2016. Those voting aye: Kerkman, Baker, Williby, Henery and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

The following items were moved to the June 10th, 2014 board meeting due to the Antelope County Highway Superintendent did not have the resolutions prepared: setting the public hearing date for the abandonment or vacation of 1 mile of 517 Avenue located between 858 Road and 859 Road, Royal Township and setting the public hearing date for the abandonment or vacation of 842nd Road starting at the intersection of 521st Avenue and extending west to its intersection with Highway 14, Elgin Township.

Dave Beckman and other individuals met with the county board regarding the stop sign resolution passed at the May 6, 2014 board meeting that the temporary stop sign controlling west bound traffic at the intersection of 523rd Avenue and 835th Road be made permanent. Mr. Beckman does not want traffic on 835th Road to come to a complete stop and would like both signs removed. Antelope County Highway Superintendent Brian McDonald informed Mr. Beckman that his study shows that it is in the best interest for the safety of the public to

stop the south bound traffic at this intersection. When the building structures have been removed then another study will be conducted to see if the stop signs are in the proper location. Motion by Kerkman, seconded by Williby authorizing Chairman Schwager to sign the resolution removing the stop sign controlling the west bound traffic at the intersection of 523rd Avenue and 835th Road and a stop sign be erected controlling the south bound traffic at the intersection of 523rd Avenue and 835th Road. Those voting aye: Baker, Williby, Henery, Kerkman and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

RESOLUTION NO. 2014-06-0002

WHEREAS, a resolution adopted the 6th day of May, 2014, authorized a stop sign to control westbound traffic at the intersection of 523rd Avenue and 835th Road.

WHEREAS, it was brought to our attention that there is more traffic traveling east-west than north-south.

WHEREAS Brian McDonald, PE after reviewing this additional information recommended that the stop control be placed on the lesser traveled road and stop south bound traffic and allow the west bound traffic to pass without stopping as this will allow for adequate site distance at the intersection and stop the lesser number of vehicles.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of Antelope County, Nebraska, that the stop sign erected to control west bound traffic be removed and a stop sign be erected to control south bound traffic at the intersection of 523rd Avenue and 835th Road.

Adopted this 3rd day of June, 2014, at Neligh, Nebraska

ATTEST: (SEAL)

BOARD OF COUNTY SUPERVISORS OF
ANTELOPE COUNTY, NEBRASKA

Carolyn Pedersen /s/
Antelope County Clerk

Jerald Schwager /s/
Chairman of County Board

The bids for the Clearwater South C-2(372) construction project were opened at 10:10 AM with the following individuals submitting bids: K&L Construction, Inc., Sargent Bluffs, Iowa – representative present for bid opening but did not get his name – total bid price \$144,407.25 with a start date of July 21, 2014; Rutjens Construction, Inc., Tilden, Nebraska – Rick Reikofski present – total bid price \$98,459.75 with a start date of August 15, 2014; and Klabenes Construction LLC, Clearwater, Nebraska – no one present for bid opening – total bid price \$88,780.60 with a start date of July 15, 2014. Bids reviewed by Antelope County Highway Superintendent Brian McDonald. Motion by Henery, seconded by Kerkman to award the Clearwater South C-2(372) construction project to Klabenes Construction, Clearwater, Nebraska with a bid price of \$88,780.60 and a start date of July 15, 2014; pending review of the bid numbers by McDonald. Those voting aye: Williby, Henery, Kerkman, Baker and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Fran Baum, Dave Baum and Mike Kinney met with the board to discuss repairing the three miles of 511 Avenue located 10 miles west of Elgin on the south side of Highway 14. Supervisor Kerkman stated that the last mile of this road needed to be fixed but was not sure how to fix the first two miles. It was decided that these three miles will be taken care of this fall. No further action taken.

Chairman Schwager read the following statement: “next thing on the agenda is the board to address the personnel issue. This is the same issue that we held a closed session at our last regular meeting for. Does any member of the board believe that to further discuss this issue and complaint, it would be necessary to do so in a closed session for the prevention of needless injury to the reputation of the individual or individuals involved? If so, I need you to make a motion to have a closed session for that purpose pursuant to the Open Meetings Act, if the motion is seconded and the majority vote is in favor of a closed session it will be discussed in closed session, otherwise it can be discussed during this open public meeting.” Motion by Henery, seconded by Williby to further discuss the personnel policy issue and complaint previously received by the board in a closed session to prevent any needless injury to the reputation of the individual or individuals involved and also that the individual or individuals involved did not request an open public meeting according to the open meetings act, Section 84-1410. Those voting aye: Henery, Kerkman, Baker, Williby and Schwager. Nays none. Bolling and Brandt absent. Motion carried. Went into closed session at 10:46 AM. Discussed and addressed the personnel policy issue and complaint received at the May 12, 2014 meeting. Closed session doors opened at 11:12 AM. Chairman Schwager stated that during closed session the board discussed and addressed the personnel policy issue and complaint. Motion by Williby, seconded by Baker to go out of closed session. Those voting aye: Kerkman, Baker, Williby, Henery and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Antelope County Attorney Joe Abler informed the county board that Madison County Attorney Joe Smith has been appointed as Special Prosecutor in the case against Supervisor Brandt.

Antelope County Attorney Joe Abler informed the county board that The Willows Assisted Living had applied for and obtained Tax Increment Financing (TIF) from the City of Neligh through its Community Development Agency sometime in 1999. The terms of the TIF called for the tax revenues from the Willows improvements to be applied to the bond for a period of 15 years beginning January 1, 2001. The City of Neligh gave the County Assessor and County Treasurer notice that the taxes were to be applied in part to the outstanding Bond obligations and the City of Neligh gave the Assessor and Treasurer notice of the cancellation of the Bond during the 2013 calendar year, which was before the Bond had been fully paid off or expired on its own terms. Due to this mistake The Willows has not received the full benefit of the TIF and payments remain due and owing on the Bond. In order to correct this mistake an agreement was drawn up between the Antelope County Assessor, Antelope County Treasurer, the City of Neligh and the Willows which would rectify the error. Motion by Henery, seconded by Kerkman to allow Antelope County Treasurer Sandy Knapp, Antelope County Assessor Heather McWhorter and Antelope County Attorney Joe Abler to sign the agreement to correct the TIF error with The Willows, Neligh, Nebraska. Those voting aye: Baker, Williby, Henery, Kerkman and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

AGREEMENT

This Agreement is made this 3rd day of June, 2014, by and between the following parties:

The Willows Assisted Living Facility, LLC, a Nebraska limited liability company (hereinafter referred to as "Willows" or "the Willows"), and its counsel, James P. Meuret;

The City of Neligh, including the Community Development Agency for the City of Neligh, by and through their authorized representative, _____ (hereinafter referred to as "City of Neligh"), and its counsel, James McNally;

The Antelope County Assessor Heather McWhorter (hereinafter referred to as "Assessor"), and its counsel, Joseph Abler, Antelope County Attorney; and

The Antelope County Treasurer, Sandy Knapp (hereinafter referred to as "Treasurer"), and its counsel Joseph Abler, Antelope County Attorney.

WHEREAS, in 1999, the Willows began plans to make improvements and build an assisted living facility located in the City of Neligh;

WHEREAS, in order to fund and finance the proposed improvements, the Willows sought after, and obtained, tax increment financing from the City of Neligh;

WHEREAS, the City of Neligh, by and through its Community Development Agency, granted the Willows the tax increment financing;

WHEREAS, to accomplish the tax increment financing, the City of Neligh caused a Series 1999 Bond ("Bond") to be issued to the Willows in the amount of \$213,000.00. The Willows offered to purchase the Bond, and such offer was accepted by the City of Neligh;

WHEREAS, the terms of the tax increment financing called for the tax revenues from the Willows improvements to be applied to the bond for a period of 15 years beginning January 1, 2001;

WHEREAS, pursuant to the terms of the tax increment financing, the City of Neligh gave the Assessor and Treasurer notice that the taxes were to be applied, in part, to the outstanding Bond obligations;

WHEREAS, due to mutual mistake, the City of Neligh gave the Assessor and Treasurer notice of the cancellation of the Bond during the 2013 calendar year, which was before the Bond had either a) been fully paid off or b) expired on its own terms;

WHEREAS, as a result of this mutual mistake between the parties, the Willows has not received the full benefit of the tax increment financing and payments remain due and owing on the Bond, as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and in order to correct a mistake and to place all parties hereto in approximately the same position they were in prior to the early termination of the Bond, the parties agree as follows:

1. The above recitals are incorporated as if fully set forth herein.
2. After receipt of the notice of cancellation from the City of Neligh, the Assessor and Treasurer assessed and collected taxes that appeared to be properly due and owing for taxes assessed in 2013, and first becoming delinquent in 2014.
3. The Willows did not realize the mistake between the parties until spring of 2014, when it appeared that the Willows was not going to receive the benefit of the tax increment financing.

As such, the Assessor's tax assessment for the 2013 calendar year, first becoming delinquent in 2014, has been issued and paid by the Willows, notwithstanding the mutual mistake.

4. The parties mutually agree and acknowledge that the process to unwind and reclaim the 2013 tax payments would put an unnecessary and undue burden upon the taxing agencies having already built in the taxes into their budgets.
5. As such, all parties to this Agreement agree that the 2013 taxes assessed by the Assessor and collected (or which will be collected) by the Treasurer, the same becoming delinquent in 2014, shall be paid and collected as if the Bond is not in place.
6. All parties to this Agreement hereby further agree that taxes assessed for the calendar years 2014 and 2015 shall be assessed and collected against the Willows in accordance with the terms of the Bond, with the following exception: The Willows shall pay the 2015 calendar year taxes (first becoming delinquent in 2016), in full (and not as a half or partial payment), on or before December 31, 2015, while still receiving the benefit of the Bond. This "pre-payment" of 2015 calendar year taxes will allow the Willows to receive the full benefit of the Bond, while staying within the 15 years allowed by the terms of the Bond and Nebraska law.
7. All parties to this Agreement agree that the payment procedure set forth in section 6 shall be effective notwithstanding any provision in the Bond which states otherwise. The parties understand that this so called "prepayment" of taxes is a good faith compromise by all parties in an attempt to stay within the terms of the Bond's timeframe, while placing all parties in the position they would have otherwise absent the mutual mistake.
8. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Nebraska.
9. This Agreement contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof and supersede all prior agreements and negotiations with respect to the subject matter hereof, except for the Bond and the Redevelopment Contract. In the event of an irreconcilable conflict between the terms of the existing Bond and Redevelopment Contract, on one hand, and the terms of this Agreement, on the other hand, then this Agreement shall control.
10. No provision of this Agreement shall be deemed to have been waived, except if such waiver is contained in a written instrument executed by the party against whom such waiver is to be enforced. No waiver by a party of any term or condition of this Agreement shall constitute a waiver by such party of any prior, concurrent or subsequent breach or default of the same or any other term or condition of this Agreement.
11. If any part of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed and enforced by the maximum extent permitted by law. If such provision cannot be reformed, it shall be severed from this Agreement and the remaining portions of this Agreement shall be valid and enforceable.
12. In the event this Agreement is held to be invalid or is otherwise unenforceable, and is further held not to be severable, all parties hereto irrevocably agree that the Willows claim or claims as a result of the parties' mutual mistake shall not be barred due to any statute of limitations defense by any party to this Agreement. Each party to this Agreement, by signing below, irrevocably waives its right to a defense that the Willows claim or claims are barred by a statute of limitations defense. Notwithstanding that, the parties hereto do not waive any other defense at law or in equity, to any claim that the Willows may have to bring to enable the Willows to be placed in the same position it would have been absent mutual mistake.

Heather McWhorter /s/

Dated 06/27/2014

Antelope County Assessor

Sandy Knapp /s/

Dated 06/27/2014

Antelope County Treasurer

The Willows Assisted Living Facility, LLC

Mary Madelyn Rice /s/

Dated 06/26/2014

Chairman of the Board of Directors

City of Neligh

Dated 06/19/2014

Jeri Anderson /s/

Chairman of the Board

Approved as to Form and to Content:

James P. Meuret /s/ Dated 06/25/2014
Counsel for the Willows Assisted Living Facility, LLC
Joseph McNally /s/ Dated 06/23/2014
Counsel for City of Neligh
Joseph Abler /s/ Dated 06/30/2014
Antelope County Attorney

No action taken on the sale of the two tracts of land the county owns in Frenchtown Township due to the County Attorney has not checked to see if the county board can do this by silent auction. This will be placed on the June 10, 2014 meeting agenda.

Motion by Henery, seconded by Williby to hire a part time individual to help with the asphalt recycling machine; said individual will only work when the asphalt recycling machine is operating and will be paid part time wages of \$11.50 per hour. Those voting aye: Williby, Henery, Kerkman, Baker and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Antelope County Joe Abler requested that the county board go into closed session to discuss investigative proceedings regarding possible criminal misconduct by a county official. Motion by Williby, seconded by Henery to go into closed session to discuss investigative proceedings of possible criminal misconduct by a county official according to the open meetings act Section 84-1410(C). Those voting aye: Henery, Kerkman, Baker, Williby and Schwager. Nays none. Bolling and Brandt absent. Motion carried. Went into closed session at 11:31 AM. Doors opened at 11:41 AM. Chairman Schwager stated that the investigative proceedings regarding possible criminal misconduct by a county official was discussed during closed session. Motion by Kerkman, seconded by Baker to go out of closed session. Those voting aye: Kerkman, Baker, Williby, Henery and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

The following correspondence was reviewed and placed on file: email from Alissa Krinsky with Invenergy LLC requesting a count of county supervisors coming to the ribbon cutting on June 25, 2014 at Elgin; email from James Williams requesting a county supervisor to speak for about 3 minutes at the Prairie Breeze ribbon cutting on June 25, 2014; NIRMA's Safety Shorts dated June 1, 2014, Volume 2, Number 6; current expenditures for all departments within the Road and Bridge fund through May 31, 2014; letter from Mike Foley Auditor of Public Accounts stating that the state auditor's office will conduct the 2013/2014 county audit; invitation from the Northeast Community College Extended Campus at O'Neill, Nebraska to a celebration they are holding on June 10, 2014 at 10:00 AM; email from NIRMA's Road Safety and Loss Prevention Specialist Tim Baxter stating that the county needs to notify the landowner/tenants who are planting their crops in the county right of way and ask them to remove those crops from the right of way or the county will remove the crops for them, this letter should be sent from the county board or county attorney and sent certified mail, return receipt requested.

Motion by Williby, seconded by Henery to adjourn. Those voting aye: Baker, Williby, Henery, Kerkman and Schwager. Nays none. Bolling and Brandt absent. Motion carried.

Meeting adjourned at 11:54 AM.

ANTELOPE COUNTY BOARD OF SUPERVISORS

By: _____
Chairman of County Board

Attest: _____
Antelope County Clerk